



## Common Interest Community Board

### Guidance Document: Distribution of Time-Share Public Offering Statements and Purchaser Opportunity to Review Public Offering Statement Prior to Execution of a Contract

Adopted June 7, 2018

Revised March 4, 2021

*Effective April 29, 2021*

#### **I. Background**

Section 55.1-2217 of the Code of Virginia outlines statutory requirements for public offering statements for time-share programs. Subsection A of § 55.1-2217 states, in part:

Prior to the execution of a contract for the purchase of a time-share, the developer shall prepare and distribute to each prospective purchaser a copy of the current public offering statement regarding the time-share program. The public offering statement shall (i) fully and accurately disclose the material characteristics of the time-share program registered under this chapter and such time-share offered and (ii) make known to each prospective purchaser all material circumstances affecting such time-share program. [Emphasis added.]

In addition, Subsection I of § 55.1-2217 states:

The public offering statement may be in any format, including any electronic format, provided that the prospective buyer has available for review, along with ample time for any questions and answers, a copy of the public offering statement prior to his execution of a contract. [Emphasis added.]

The requirement in Subsection A that developers distribute public offering statements to prospective purchasers prior to execution of a contract for purchase came about as a result of changes made to The Virginia Real Estate Time-Share Act (“Time-Share Act”) in 1994. The change was made in conjunction with an amendment to purchaser’s cancellation rights outlined in § 55-376 of the Code of Virginia (now § 55.1-2221) which established the cancellation period to solely be seven days from the date of contract execution. Previous to the 1994 amendment, a purchaser had the right to cancel a contract within seven days following execution of the contract or receipt of the public offering statement, whichever occurred later.

Subsection I was added to § 55-374 of the Code of Virginia (now § 55.1-2217) as a result of amendments to the Time-Share Act in 2007.

Part V of the Board’s Time-Share Regulations (18 VAC 48-45-140 through 18 VAC 48-45-320) outline the requirements for public offering statements. Section 18 VAC 48-45-150 states, in part:

A. The provisions of § 55.1-2217 of the Code of Virginia and this chapter shall be strictly construed to promote full and accurate disclosure in the public offering statement. [Emphasis added.]

Section 18 VAC 48-45-20 provides the following definition:

"Full and accurate disclosure" means the degree of disclosure necessary to ensure reasonably complete and materially accurate representation of the time-share in order to protect the interests of purchasers.

## II. Issues/Concerns

The language in § 55.1-2217 suggests that it is the intention of the General Assembly to protect the public welfare by ensuring that prospective time-share purchasers be provided with, and have the opportunity to review, the public offering statement for a time-share program offering before the statutory rescission period commences.

Subsections A and I of § 55.1-2217 clearly establish the requirement, regardless of the format of the public offering statement (i.e. printed or electronic), that prospective purchasers are to receive the public offering statement before execution of a contract. Subsection I also provides that prospective purchasers have “ample time for any questions and answers” prior to execution of a contract. The requirements in Subsections A and I prescribe how a developer must act when offering or disposing of a time-share.

If a developer fails to provide a public offering statement prior to execution of a contract, or fails to give prospective purchasers adequate time to review a public offering statement, the Board can investigate complaints involving alleged violations of

the Time-Share Act and take disciplinary action as appropriate. In such instances, though, the obligation is on the consumer to allege the developer failed to comply with the Time-Share Act. However, it is not clear that prospective purchasers would know, or have reason to know, that a developer is required to provide a public offering statement, and afford them with ample time for questions and answers, prior their execution of a contract. Depending on the nature of the time-share program being offered, the length of a public offering statement, including exhibits, can number in the hundreds of pages, which may deter prospective purchasers from immediately reviewing a statement upon receipt. To the extent potential purchasers are unaware of the protection afforded to them under the Time-Share Act, a potential purchaser is placed at a significant information disadvantage in the transaction vis-à-vis the developer. The developer has greater knowledge of the material characteristics and circumstances in the time-share being offered, including any terms and conditions that might affect the purchaser's decision to accept or decline a purchase. The purpose of the public offering statement is to provide a potential purchaser with sufficient notice of these material characteristics and circumstances. By reviewing the public offering statement and being afforded opportunity to have any questions answered, prior to execution of the contract, potential purchasers can educate themselves regarding the time-share being offered, and be on more equal footing with the developer in the transaction.

To the extent a purchaser executes a purchase contract, thereby initiating the rescission period, without having first reviewed the public offering statement, the purchaser is placed at a disadvantage. The purchaser's only remedy may be to cancel the contract during the rescission period. However, the purchaser may not be fully aware of any material characteristics and circumstances of the time-share that might have otherwise caused them to forgo a purchase, and may not become aware of these until after the rescission period has ended.

A review of time-share related complaints received by the Office of the Common Interest Community Ombudsman for the 2015-2016 reporting period (56 cases) revealed there were at least six (6) cases where the complaining parties indicated in their complaint that they did not have the opportunity to review documents prior to signing a contract. In the 2016-2017 reporting period, there were at least eight (8) time-share related complaints where the complaining parties indicated that they did not have an opportunity to review documents prior to signing a contract.

Inasmuch as the requirements to provide a public offering statement, and allow ample time for questions and answers prior to execution of a contract serve to protect consumers, adhering to these requirements is beneficial to developers. Following these requirements can place developers in a better position with respect to any complaints that may be made to the Board, as the Board can more efficiently determine whether a complaint is legitimate or simply a matter of "buyer's remorse."

The Board's regulations pertaining to public offering statements, which supplement statutory requirements under § 55.1-2217, largely address the form and content of a public offering statement, with the principal standard being that public offering

statements are to provide “full and accurate” disclosure to consumers in order for a time-share to qualify for registration. Regarding delivery of a public offering statement, 18 VAC 48-45-160.B provides that a developer may include a receipt page documenting a purchaser’s receipt of the public offering statement. The regulations do not specifically address the requirement of delivery of a public offering statement prior to execution of a contract, or the requirement that potential purchasers be afforded an opportunity for questions and answers. Consumers, developers, and other members of the public may benefit from the Board’s guidance on this issue.

### **III. Board Guidance**

The Board adopts a guidance document that establishes the following:

1. Full and accurate disclosure in a public offering statement includes disclosure to each potential purchaser of the developer’s obligations, as outlined in § 55.1-2217, to distribute the public offering statement to each potential purchaser prior to execution of the purchase contract; and that each potential purchaser must have the public offering statement available for review, along with ample time for questions and answers, prior to execution of the purchase contract.
2. The disclosure described in Item #1 above must be provided in either (i) the first page of the public offering statement required by 18 VAC 48-45-160.C; or (ii) the optional public offering statement receipt page described in 18 VAC 48-45-160.B.
3. A developer that seeks to distribute a public offering statement by way of alternative media (i.e. other than paper copy) must obtain written consent from the prospective purchaser to receive the public offering statement by way of alternative media, prior to execution of the purchase contract; and must inform prospective purchasers of the developer’s obligation, as outlined in Subsection I of § 55.1-2217, to provide potential purchasers with a copy of the public offering statement for review, and ample time for questions and answers, prior to execution of a purchase contract.